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Committee on Relations with the Host Country

Letter dated 26 October 2001 from the Minister-Counsellor of the Permanent Mission of the United States of America to the United Nations addressed to the Chairman of the Committee on Relations with the Host Country

I have the honour to refer to the attached note verbale dated 26 October 2001, No. HC-50-01 and its appendix, sent by the United States Mission to the Permanent Mission of Cuba to the United Nations and request that you, in your capacity as Chairman of the Committee on Relations with the Host Country, circulate this letter and the attachment as a document of the Committee (see annex).

(*Signed*) Robert C. **Moller**
Minister-Counsellor
Host Country Affairs

01-60588 (E) 291001

Annex to the letter dated 26 October 2001 from the Minister-Counsellor of the Permanent Mission of the United States of America to the United Nations addressed to the Chairman of the Committee on Relations with the Host Country

The United States Mission to the United Nations presents its compliments to the Permanent Mission of Cuba to the United Nations and has the honour to refer to the latter's Note NV-422 of October 15, 2001, concerning a Restraining Notice issued pursuant to *Martinez v. The Republic of Cuba*, and to the Appendix to that note prepared by the Permanent Mission's attorneys, Rabinowitz, Boudin, Standard, Krinsky and Lieberman.

The Minister-Counsellor for Host Country Affairs of the United States Mission has received a letter from the United States Attorney for the Southern District of New York which addresses the concerns of the Permanent Mission and its attorneys in this regard. The diplomatic accounts of the Permanent Mission are operating and will continue to operate normally, and the United States Mission therefore rejects the claim of the Permanent Mission of Cuba that the Restraining Notice, which we have already determined is invalid, is a violation of its diplomatic privileges and immunities or serves in any way as an impediment to the Permanent Mission's full and normal functioning.

The United States Mission to the United Nations avails itself of this opportunity to renew to the Permanent Mission of Cuba to the United Nations the assurances of its highest consideration.

Enclosure

Letter dated 25 October 2001 from the United States Attorney addressed to the Minister-Counsellor of the Permanent Mission of the United States of America to the United Nations

Re: *Martinez v. Republic of Cuba*, Index No. 111427-01, (Supreme Court, New York County)

I write to address questions that have arisen regarding the legal effect, if any, of the Restraining Notice, dated June 27, 2001 (the "Restraining Notice"), issued by Diane M. Conniff, Esq., attorney for the plaintiff in the above-referenced action, with respect to the following accounts held at Chase Manhattan Bank:

Mission Permanente de Cuba	account number 15001369
Cuban Mission to the UN	account number 15003116

It is our understanding that the above-referenced accounts are held by the Republic of Cuba and are used for diplomatic purposes. We have been advised by counsel for Chase Manhattan Bank that the bank is not honoring the Restraining Notice as to these accounts, and that the accounts are operating normally. For the reasons discussed below, we do not believe the Restraining Notice has any present effect.

As an initial matter, under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1610 (c), "[n]o ... attachment [upon a foreign sovereign or instrumentality] ... shall be permitted until the court has ordered such attachment. ..." *Id.* As the Restraining Notice was issued by an attorney, and has not been addressed by any court, it does not satisfy the requirements of the FSIA. *First City, Texas-Houston, N.A. v. Rafidain Bank*, 197 F.R.D. 250, 256 (S.D.N.Y. 2000); *Trans Commodities, Inc. v. Kazakstan Trading House, S.A.*, No. 96 Civ. 9782 (BSJ), 1997 WL 811474, *3 (S.D.N.Y. May 28, 1997). For that reason alone, it is facially invalid and unenforceable.

Moreover, the Restraining Notice should have no effect on the diplomatic accounts because those accounts are immune from all forms of legal process. *See* Art. 25 of the Vienna Convention on Diplomatic Relations, made applicable by Art. 105, para. 2 of the United Nations Charter, Art. V, sec. 15 of the United Nations Headquarters Agreement, and Art. IV, sec. 11 of the Convention on the Privileges and Immunities of the United Nations. Courts have not hesitated to recognize the invalidity of attempts to restrain or execute upon assets protected by diplomatic immunity. *Sales v. Republic of Uganda*, No. 90 Civ. 3972 (CSH), 1993 WL 437762, *1-2 (S.D.N.Y. Oct. 23, 1993); *Foxworth v. Permanent Mission of the Republic of Uganda to the United Nations*, 796 F. Supp. 761, 763-64 (S.D.N.Y. 1992); *Liberian Eastern Timber Corp. v. Government of the Republic of Liberia*, 659 F. Supp. 606, 608 (D.D.C. 1987).

To date, plaintiff's counsel has not sought to enforce the Restraining Notice against the diplomatic accounts, which, as stated above, continue to operate normally. In the event that any enforcement attempt is made, we are prepared to take

appropriate steps to ensure that the privileges and immunities of the diplomatic accounts are respected.

(*On behalf of*) Mary Jo White
United States Attorney

(*Signed*) Wendy H. **Schwartz**
Assistant United States Attorney